

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

JACQUELINE BROWN,

Plaintiff,

v.

Case No. 12-12685

BANK OF AMERICA, NA and
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.,

Defendants.

**ORDER DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION TO DISMISS
AND CANCELLING OCTOBER 10, 2012 MOTION HEARING**

After timely removing this foreclosure action from the Oakland County Circuit Court, on August 10, 2012, Defendants filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) in lieu of an answer. Plaintiff responded on August 31, 2011, and filed an amended complaint that adds several causes of action not presented in the original complaint. Under Federal Rule of Civil Procedure 15, a party may amend its complaint once as a matter of course within twenty-one days after service of a responsive pleading or a motion under Rule 12(b), whichever is earlier. Fed. R. Civ. P. 15(a)(1)(B). Plaintiff filed her amended complaint within the twenty-one-day window, so it is now her operative pleading. Because Defendants' motion to dismiss addresses the original complaint, it must be denied without prejudice. Accordingly,

IT IS ORDERED that Defendants' motion to dismiss [Dkt. # 5] is DENIED WITHOUT PREJUDICE. In accordance with Rule 12(a)(1), Defendants have twenty-

one days after service of Plaintiff's amended complaint to file an answer or a renewed motion to dismiss.

IT IS FURTHER ORDERED that the motion hearing scheduled for October 10, 2012 [Dkt. # 6] is CANCELLED.

s/Robert H. Cleland
ROBERT H. CLELAND
UNITED STATES DISTRICT JUDGE

Dated: September 7, 2012

I hereby certify that a copy of the foregoing document was mailed to counsel of record on this date, September 7, 2012, by electronic and/or ordinary mail.

s/Lisa G. Wagner
Case Manager and Deputy Clerk
(313) 234-5522